

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND SWIERCZ and ROBERT NELSON,

Plaintiffs-Appellants,

V

CRAWFORD COUNTY BOARD OF
COMMISSIONERS,

Defendant-Appellee.

UNPUBLISHED

October 16, 2003

No. 232344

Crawford Circuit Court

LC No. 00-005067-AS

Before: Meter, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiffs Raymond Swiercz and Robert Nelson, were county road commissioners whose positions were terminated by defendant Crawford County Board of Commissioners, on the grounds that Swiercz and Nelson violated provisions of the Open Meetings Act (OMA). At the termination hearing before the Board of Commissioners, plaintiffs were represented by counsel, witnesses were called, and evidence presented for two (2) days. The county commissioners voted to sustain the charges filed, and to remove the plaintiffs from their positions as county road commissioners on the grounds that their violations of the OMA constituted misconduct or habitual or willful neglect of duty. After the hearing, plaintiffs filed suit in circuit court and requested a temporary restraining order and preliminary injunction which the trial court denied. Thereafter, on stipulation, the circuit court agreed to adjudicate the matter on briefs and the trial judge ordered a judgment of no cause of action against plaintiffs. It is from this judgment that dismisses their complaint and cause of action that plaintiffs appeal.

Plaintiffs attribute four errors to the trial court which plaintiffs say require reversal. Plaintiffs contend that the circuit court erred 1) by allowing defendants to “decide” violations of the OMA when, in plaintiffs’ view, a county board of commissioners has no right to make decisions regarding violations of the OMA; 2) in holding that the county board of commissioners could “opine” that defendants were guilty of official misconduct; 3) in finding that the county commissioners had sufficient evidence to terminate plaintiff and 4) in determining that county commissioners could “impartially” make a determination regarding plaintiffs.

We reject plaintiffs’ argument that the circuit court erred when it allowed defendant to decide violations of the Open Meetings Act and held that the OMA’s statute of limitations did not bar defendant’s charges. Statutory interpretation is a question of law that this Court reviews de novo. *Cork v Applebee’s of Michigan, Inc*, 239 Mich App 311, 316; 608 NW2d 62 (2000).

The Board of Commissioners clearly could decide if plaintiffs obeyed or disobeyed state law in discharging their duties and respond accordingly. Under MCL 46.11(n), the County Board of Commissioners may:

remove an officer or agent appointed by the board if, in the board's opinion, the officer or agent is incompetent to execute properly the duties of the office or if, on charges and evidence, the board is satisfied that the officer or agent is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal.¹

Here, the stated ground for the action taken² was that plaintiffs had a pattern of violating the OMA, MCL 15.261 *et seq.* However, the action was not brought under the OMA, it was brought under the powers delineated in MCL 46.11(n) and MCL 224.6. MCL 46.11(n) allows for removal of an appointed commissioner for official misconduct, or habitual or willful neglect of duty. Of course, if plaintiffs routinely violated state laws, including the OMA, this would be grounds for termination. Therefore, it was proper for defendant to remove plaintiffs for a pattern of OMA violations under MCL 46.11(n). Therefore, the OMA's statute of limitations is not the issue, but rather, it is plaintiffs' conduct that is the issue.

Plaintiffs say also that the circuit court erred when it held that the determination regarding plaintiffs' removal was an "opinion call" by defendant. We disagree.

Regardless of how the trial court characterized the "power" of the commissioners, they had the statutory right to remove plaintiffs from office under MCL 46.11(n). Contrary to plaintiffs' argument, the language of the statute uses the word "opinion. MCL 46.11(n). Courts are bound by the intent of the legislature and its plain meaning. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 221, 224; 507 NW2d 422 (1993). Statutes must be construed to avoid rendering words in a statute mere surplusage. *Id.* at 228. The statute first uses the word "opinion" and then states "if the board is satisfied." MCL 46.11(n). The language of the statute indicates that the removal of an appointed commissioner is indeed based on the board's opinion that sufficient cause for removal has been presented.

¹ Additionally, the process for removal of a commissioner is described in MCL 224.6(1):

A county road commissioner appointed in that county shall not be removed from office before the expiration of his or her term of office without being given due written notice of the charges made against him or her and an opportunity to appear before the county board of commissioners for a hearing on the charges.

² In their appeal brief, plaintiffs make the unsupported accusation that plaintiffs' termination was the result of a political vendetta. Had plaintiffs developed and supported this naked conclusory accusation, perhaps this matter would have been decided differently by the trial court.

Here, plaintiffs were represented by counsel at a two-day hearing monitored by a retired judge and the Board of Commissioners found that plaintiffs repeatedly violated the OMA. Therefore, the trial court properly concluded that the Board of Commissioners complied with MCL 46.11(n) and MCL 224.6(E)

Plaintiffs further assert that the circuit court erred in failing to reverse defendant's decision to remove plaintiffs from office because sufficient evidence was not presented that plaintiffs violated the OMA or were guilty of official misconduct or habitual neglect of duty. We cannot conclude that the trial court erred in his review of the Commission's decision.

The OMA "is entitled to a broad interpretation to promote openness in government[.]" and the closed session exceptions are construed strictly to limit the situations that are not open to the public. *Wexford Co Prosecutor v Pranger*, 83 Mich App 197, 201, 204; 268 NW2d 344 (1978). Plaintiffs' violations were more than mere technical violations. Cf. *Arnold Transit Co v City of Mackinac Island*, 99 Mich App 266, 274-275; 297 NW2d 904 (1980), *aff'd* 415 Mich 362 (1982).

"A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body." MCL 15.265(1). When a quorum of the members of a public body are present, it is a meeting. *Nicholas v Meridian Charter Twp Bd*, 239 Mich App 525, 531; 609 NW2d 574 (2000). Even if deliberations do not lead to a decision on that occasion, the meeting is still subject to the OMA. *Id.*

Here, the commissioners found the OMA was violated. The only time all three road commissioners met with the current managing director before offering him the managing director's position was in a closed meeting, although the candidate did not request a closed meeting. Regardless of what it was called, this meeting was an interview. The candidate met with all three road commissioners specifically about the position and then was offered the position by telephone. This meeting was an OMA violation. Further, plaintiffs' actions regarding their attendance at union negotiations violated the OMA because they did not post meetings, keep minutes, or vote properly to close meetings. Whether we or the trial court would have ruled as the County Board of Commissioners ruled is not the issue. The statute gives the County Board of Commissioners the statutory right to make this decision. See e.g., *Detroit Public Welfare Comm v Detroit Civil Service Comm*, 289 Mich 101, 106; 286 NW 173 (1939).

Finally, plaintiffs say that the circuit court erred in determining that the Board of Commissioners were fair and impartial and did not provide plaintiffs with a fair hearing that protected their procedural and substantive due process rights.

We again, must reject this argument because plaintiffs received sufficient notice of the claims against them, and their hearings comported with constitutional and statutory requirements. See *Molitor v Miller*, 102 Mich App 344, 350; 301 NW2d 532 (1980); *Crampton v Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975). The Board of Commissioners engaged in a thorough discussion of the allegations, and there was no indication of bias toward plaintiffs during their discussions. Notably, a moderator, a former judge, was present to oversee the proceedings, further ensuring that the plaintiffs' hearing was a fair and impartial one. Plaintiffs had the benefit of counsel and exercised the right to call witnesses on their behalf and cross-examine the witness against them. Importantly, the statute states that it will be the Board

of Commissioners who determine if an appointed road commissioner has engaged in misconduct, or habitual or willful neglect of duty. MCL 46.11(n); MCL 224.6(1). The Crawford County Board of Commissioners complied with the statutory requirements in reviewing the evidence presented against plaintiffs, and afforded plaintiffs due process.

Affirmed.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Bill Schuette